

A N O R D I N A N C E

AN ORDINANCE TO AMEND CHAPTER 2.92 OF THE CODE OF ORDINANCES OF THE CITY OF EAU CLAIRE ENTITLED "CITY PROCUREMENT"

THE CITY COUNCIL OF THE CITY OF EAU CLAIRE DO ORDAIN AS FOLLOWS:

SECTION 1. That s. 2.92.210, entitled "Prevailing wage on building or work financed in whole or in part with city financial assistance," is hereby created to read as follows:

2.92.210 Prevailing wage on building or work financed in whole or in part with city financial assistance.

A. Purpose and intent. It is the policy of the city to assure equitable wages for all building or construction work which is financed in whole or in part with city financial assistance. Extending prevailing wages to workers employed on such projects preserves and promotes the public health, safety, prosperity, and general welfare of the people of the city of Eau Claire.

B. On any projects for which the city contributes financial assistance and which are "public work," "building work," or "erection, construction, remodeling, repairing" and on which work is performed by "employees working on the project" or "laborers, workers, and mechanics" as those terms are defined herein, all employees shall be compensated at the rates established under Wisconsin Statutes and Section DWD 290 of the Wisconsin Administrative Code or as may be provided by the city from time to time. In the event of a difference in the required rates or provisions, the higher wage or more stringent provision established by the city or the state shall be required.

C. "City financial assistance" means any grant, cooperative agreement, loan, contract (other than a public work contract, a supply procurement contract, a contract of insurance or guaranty or a collective bargaining agreement) or any other arrangement by which the city provides or otherwise makes available assistance, in the form of:

1. Funds.
2. Real and personal property or any interest in or use of such property, including:
 - a. Transfers or leases of such property for less than the fair market value, or for reduced consideration; and
 - b. Proceeds from a subsequent transfer or lease of such property if the city's share of its fair market value is not returned to the city.
3. The sale and lease of, and the permission to use (on other than a casual or transient basis) city property or any interest in such property, the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale, lease or furnishing of services to the recipient.
4. Any city agreement, arrangement or other contract which has as one of its purposes the provision of financial assistance, including purchase of service agreements.

5. "City financial assistance" includes, but is not limited to redevelopment contracts, economic development agreements, revenue or loan agreements which an eligible participant or authorized developer under s. 66.1103, Wis. Stats., contracts with developers or other entities authorized by ss. 66.1333(5) and 66.1105(3), Wis. Stats., and assistance provided under s. 66.1109, Wis. Stats.

D. All contracts or agreements for such projects shall include the following provision: Prevailing wages. The contractor shall pay its employees the wage rates established pursuant to ss. 2.92.210 and 2.92.215 and will comply with all other requirements of those ordinances, and shall require in its contracts and subcontracts for work on the project, adherence by those contractors, subcontractors and agents to the wage rates and other requirements of those ordinances.

SECTION 2. *That s. 2.92.215, entitled "Regulation of public work," is hereby created to read as follows:*

2.92.215 Regulation of public work.

A. Wage rates for employees of public work contractors.

1. General and authorization. Every contract for public work issued by the city of Eau Claire shall require the contractor to compensate its employees at the prevailing wage rate in accordance with s. 66.0903, Wis. Stats., DWD 290 of the Wisconsin Administrative Code, and as hereinafter provided.

a. This provision shall apply to all contracts for public work regardless of any exclusions contained in Wisconsin Statutes, including s. 66.0903(3)(c), based on the value of the contract, number of trades involved, or type of work.

b. "Public work" shall include building or work involving the erection, construction, remodeling, repairing or demolition of buildings, parking lots, highways, streets, bridges, sidewalks, street lighting, traffic signals, sanitary sewers, water mains and appurtenances, storm sewers, and the grading and landscaping of public lands.

c. "Building or work" includes construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work, except for the delivery of mineral aggregate such as sand, gravel, bituminous asphalt concrete or stone which is incorporated into the work under contract with the city by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

d. "Erection, construction, remodeling, repairing" means all types of work done on a particular building or work at the site thereof in the construction or development of the project, including, without limitation, erection, construction, remodeling, repairing, altering, painting, and decorating, the transporting of materials and supplies to or from the building, or work done by the employees of the contractor, subcontractor, or agent thereof, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building, or work by persons employed by the contractor, subcontractor, or agent thereof.

e. "Employees working on the project" means laborers, workers, and mechanics employed directly upon the site of the work.

f. "Laborers, workers, mechanics, and truck drivers" includes sub-journeypersons and properly registered and indentured apprentices, but excludes clerical, supervisory, and other personnel not performing manual labor.

2. Establishment of wage rates. The department of public works shall periodically obtain a current schedule of prevailing wage rates from DWD. The schedule shall be used to establish the city of Eau Claire prevailing wage rate schedule for public work construction (prevailing wage rate). The department of public works may include known increases to the prevailing wage rate, which can be documented and are to occur on a future specific date. Upon approval by the common council, the prevailing wage rate shall be included in public work contracts subsequently negotiated or solicited by the city. Except for known increases contained within the schedule, the prevailing wage rate shall not change during the contract.

3. Payrolls and records.

a. The contractor shall keep weekly payroll records setting forth the name, address, telephone number, classification, wage rate and fringe benefit package of all the employees who work on the contract, including the employees of the contractor's subcontractors and agents. Such weekly payroll records must include the required information for all city contracts and all other contracts on which the employee worked during the week in which the employee worked on the contract. These records will reflect the individual time each employee worked on the project for each day of the project. Such records shall also set forth the total number of hours of overtime credited to each such employee for each day and week and the amount of overtime pay received for that week. The records shall set forth the full weekly wages earned by each employee and the actual hourly wage rate to the employee.

b. Upon completion of the project, the contractor shall submit, together with the affidavit required by subsection 10, below, the weekly payroll records, including the records of the contractors and agents, to the city engineer for every week that work is being done on the contract.

c. Employees shall be paid unconditionally and not less often than every thirty days. Employees shall receive the full amounts accrued at the time of the payment, computed at rates not less than those stated in the prevailing wage rate, and each employee's rate shall be determined by the work that is done within the trade or occupation classification which should be properly assigned to the employee.

d. An employee's classification shall not be changed to a classification of a lesser rate during the contract. If, during the term of the contract an employee works in a higher pay classification than the one which was previously properly assigned to the employee, the employee shall be considered to be in the higher pay classification for the balance of the contract, will receive the appropriate higher rate of pay, and shall not receive a lesser rate during the balance of the contract. For purposes of clarification, it is noted that there is a distinct difference between working in a different classification with higher pay and doing work within a classification that has varying rates of pay which are determined by the type of work that is done within classification. For example, the classification operating engineer provides for different rates of pay for various classes of work and the employer shall compensate an employee classified as an operating engineer based on the highest class of work that is done in one day. Therefore, an operating engineer's rate may vary on a day to day basis depending on the type of work that is done, but it will never be less than the base rate of an operating engineer. Also, as a matter of clarification, it is recognized that an employee

may work in a higher paying classification merely by chance and without prior intention, calculation, or design. If such is the case and the performance of the work is truly incidental and the occurrence is infrequent, inconsequential, and does not serve to undermine the single classification principle herein, then it may not be required that the employee be considered to be in the higher pay classification and receive the higher rate of pay for the duration of the contract. However, the contractor is not precluded or prevented from paying the higher rate for the limited time that an employee performs work that is outside of the employer's proper classification.

e. Questions regarding an employee's classification, rate of pay, or rate of pay within a classification shall be resolved by reference to the DWD Dictionary of Occupational Classifications and Work Descriptions.

f. The contractor or its subcontractors and agents shall cooperate with city representatives seeking information regarding compliance with the provisions of this ordinance.

g. Mulcting of the employees by the contractor, subcontractors and agents on contracts subject to this section, through kickbacks or other devices, is prohibited. The normal rate of wage for the employees of the contractor, subcontractors and agents shall not be reduced or otherwise diminished as a result of the payment of the prevailing wage rate on a public work contract. Any contractor, subcontractor, or agent violating this provision shall be subject to a civil penalty in an amount equal to three times the amount of pay wrongfully diverted from employees.

4. Hourly contributions. Hourly contributions shall be determined in accordance with the prevailing wage rate and with DWD 290.01(10), Wisconsin Administrative Code.

5. Apprentices and sub-journeypersons. Apprentices and sub-journeypersons performing work on the project shall be compensated in accordance with the prevailing wage rate and with DWD 290.02 and DWD 290.025, Wisconsin Administrative Code, respectively.

6. Straight time wages. The contractors may pay straight time wages as determined by the prevailing wage rate and DWD 290.04, Wisconsin Administrative Code.

7. Overtime wages. The contractor shall pay overtime wages as required by the prevailing wage rate and DWD 290.05, Wisconsin Administrative Code.

8. Posting of wage rates and hours. A clearly legible copy of the prevailing wage rate, together with the provisions of s. 66.0903(10)(a) and (11)(a), Wis. Stats., shall be kept posted in at least one conspicuous and easily accessible place at the project site by the contractor and such notice shall remain posted during the full time any laborers, workers or mechanics are employed on the contract.

9. Evidence of compliance by contractor. Upon completion of the contract, the contractor shall file with the department of public works an affidavit stating:

a. That the contractor has complied fully with the provisions and requirements of s. 66.0901(3), Wis. Stats., and Chapter DWD 290, Wisconsin Administrative Code; that the contractor has received evidence of compliance with each of the subcontractors and agents; the names and addresses of all of the subcontractors and agents who worked on the contract.

b. That full and accurate records have been kept which clearly indicate the name and trade or occupation of every laborer, worker or mechanic employed by the contractor in connection with work on the project. The records shall show the number of hours worked by each employee and the actual wages paid therefor; where these records will be kept and the name, address and telephone number of the person who will be responsible for keeping them. The records shall be

retained and made available for a period of at least three (3) years following the completion of the project of public work and shall not be removed without prior notification to the municipality.

10. Evidence of compliance by agent and subcontractor. Each agent and subcontractor shall file with the contractor, upon completion of their portion of the contract, an affidavit stating that all provisions of s. 66.0903(3), Wis. Stats., have been fully complied with and that full and accurate records have been kept which clearly indicate the name and trade or occupation of every laborer, worker or mechanic employed by the contractor in connection with the work on the project. The records shall show the number of hours worked by each employee and the actual wages paid therefor; where these records shall be kept and the name, address and telephone number of the persons who shall be responsible for keeping them. The records shall be retained and made available for a period of at least three (3) years following the completion of the project of public work and shall not be removed without prior notification to the municipality.

11. Failure to comply with the prevailing wage rate. If the contractor fails to comply with the prevailing wage rate of this ordinance, he/she shall be in default on the contract.

12. Multiple violations. Upon the third and subsequent violations of this section, the contractor, subcontractor, or agent found in violation will be disqualified from bidding on any project subject to this section for a period of three years following such finding.

13. Exemptions. This section will not apply to work performed by public employees or to work performed on an owner-occupied dwelling in an area zoned R-1, in a TIF District. This section applies to work performed on projects receiving city financial assistance only until such time as the city financial assistance ends.

B. Sanction against bid rigging. Any corporation, firm or individual violating s. 133.01 of the Wisconsin Statutes (1971) or any subsequent amendment thereto shall, upon conviction thereof, be thereby disqualified as a bidder on any city of Eau Claire project for a period of three (3) years from the date of such conviction. However, nothing herein shall be interpreted to preclude such corporation, firm or individual from completing any and all contracts he may already have with the city at the time of such conviction, nor shall this ordinance be applied retroactively to violations occurring prior to the adoption and publication of this ordinance.

C. Public construction allowed to be done by the city without bids.

1. The installation and maintenance of irrigation equipment at a municipal golf course is hereby designated a class of public construction which may be done directly by the city without submitting same for bids, in accordance with s. 62.15(1), Wisconsin Statutes.

2. The installation of prefabricated bus shelters is hereby designated a class of public construction which may be done directly by the city without submitting same for bids, in accordance with s. 62.15(1), Wisconsin Statutes.

D. Separation of contracts and combined bids. The city council may, at its option, take separate bids for (a) general construction, (b) plumbing, (c) heating, ventilating and air condition, and (d) electrical divisions of work on the repair, remodeling or improvement of any public building or structure other than highway structures. The council may take separate bids on any divisions or subdivisions of the work it designates. Combination bids may also be requested by the council for combination of the above divisions of the work, provided that any bidder who submits a combined bid also submits separate bids for all the divisions comprising the combined bid. Contracts shall be awarded to the lowest qualified responsible bidder or bidders that result in the lowest total construction cost for the project.

(SEAL) Howard White
Council President

(SEAL) Don T. Norrell
City Manager

(ATTESTED) Donna A. Austad
City Clerk

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Second Reading September 18, 2001
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Motion to adopt the ordinance.

Terri Stanley

Seconded by:

Toby Biegel
